

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION
March 21, 2000



ORIGINAL
GTE Service
Corporation

1312 East Empire Street
Bloomington, IL 61701

GTE NORTH INCORPORATED,
GTE SOUTH INCORPORATED, and
NPCR, INC.

Joint Petition of GTE North Incorporated
GTE South Incorporated, and
NPCR, Inc. pursuant to
47 U.S.C. § 252 (i) regarding
Adoption of an Interconnection
Agreement.

ILLINOIS
COMMERCE COMMISSION
MAR 21 11 43 AM '00
CHIEF CLERK'S OFFICE

Ms. Donna Caton
Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
P.O. Box 19280
Springfield, IL 62794-9280

Dear Ms. Caton:

As directed by the Commission's March 15, 2000 Order in Docket No. 00-0059, enclosed for filing are the original and two (2) copies of the Adoption Letter signed by GTE and the accompanying amended GTE/Nextel Agreement approved by the Commission in Docket No. 99 NA-001. Per the Commission's March 15, 2000 Order, these documents are to be filed in the GTE negotiated interconnection agreement binder maintained by your office.

If you have any questions, please call Matt Johnson, Specialist-Regulatory and Governmental Affairs, telephone number (309) 663-3501, fax number (309) 663-3073.

Very truly yours,

James R. Hargrave
Assistant Vice President-
Regulatory and Governmental Affairs

Enclosure

c: Donald J. Manning
NPCR, Inc.
General Counsel
4500 Carillon Point
Kirkland, WA 98033

Bob Edgerly
Nextel Communications, Inc.
Manager-Industry Affairs
1768 Old Meadow Rd.
McLean, VA 22102 (without attachments)

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ILLINOIS COMMERCE COMMISSION
 Connie Nichols
 Assistant Secretary
 Wholesale Markets-Interconnection



ORIGINAL

HQE03B28
 600 Hidden Ridge
 P.O. Box 152092
 Irving, TX 75038
 972/718-4586
 FAX 972/719-1523

January 10, 2000

Mr. Rudolph J. Geist
 Executive Vice President
 0 1 Communications of Illinois, LLC
 770 L Street, Suite 960
 Sacramento, CA 95814

ILLINOIS
 COMMERCE COMMISSION
 MAR 21 11 43 AM '00
 CHIEF CLERK'S OFFICE

Dear Mr. Geist:

We have received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996, you wish to adopt the terms of the negotiated Interconnection Agreement between US Xchange of Illinois, LLC and GTE that was approved by the Commission as an effective agreement in the State of Illinois in Docket No. 98-NA-042 (Terms)¹. I understand 0 1 Communications of Illinois, LLC ("O 1") has a copy of the Terms.

Please be advised that our position regarding the adoption of the Terms is as follows.

On January 25, 1999, the Supreme Court of the United States ("Court") issued its decision on the appeals of the Eighth Circuit's decision in *Iowa Utilities Board*. Specifically, the Supreme Court vacated Rule 51.319 of the FCC's First Report and Order, FCC 96-325, 61 Fed. Reg. 45476 (1996) and modified several of the FCC's and the Eighth Circuit's rulings regarding unbundled network elements and pricing requirements under the Act. *AT&T Corp. v. Iowa Utilities Board*, No. 97-826, 1999 U.S. LEXIS 903 (1999).

Three aspects of the Courts decision are worth noting. First, the Court upheld on statutory grounds the FCC's jurisdiction to establish rules implementing the pricing provisions of the Act. The Court, though, did not address the substantive validity of the FCC's pricing rules. This issue will be decided by the Eighth Circuit on remand.

¹ *These "agreements" are not agreements in the generally accepted understanding of that term. GTE was required to accept these agreements, which were required to reflect the then-effective FCC rules.

Mr. Rudolph J. Geist
January 10, 2000
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Second, the Court held that the FCC, in requiring ILECs to make available all UNEs, had failed to implement section 251(d)(2) of the Act, which requires the FCC to apply a "necessary" or "impair" standard in determining the network elements ILECs must unbundle. The Court ruled that the FCC had improperly failed to consider the availability of alternatives outside the ILEC's network and had improperly assumed that a mere increase in cost or decrease in quality would suffice to require that the ILEC provide the UNE. The Court therefore vacated in its entirety the FCC rule setting forth the UNEs that the ILEC is to provide. The FCC must now promulgate new UNE rules that comply with the Act*. As a result, any provisions in the Terms requiring GTE to provide UNEs are nullified.

Third, the Court upheld the FCC rule forbidding ILECs from separating elements that are already combined (Rule 315(b)), but explained that its remand of Rule 319 "may render the incumbents' concern on [sham unbundling] academic." In other words, the Court recognized that ILEC concerns over UNE platforms could be mooted if ILECs are not required to provide all network elements: "If the FCC on remand makes fewer network elements unconditionally available through the unbundling requirement, an entrant will no longer be able to lease every component of the network."

The Terms which 0 1 Communications of Illinois, LLC seeks to adopt does not reflect the Courts decision, and any provision in the Terms that is inconsistent with the decision is nullified.

GTE anticipates that after the FCC issues new final rules on UNEs, this matter may be resolved. In the interim, GTE would prefer not to engage in the arduous task of reforming agreements to properly reflect the current status of the law and then to repeat the same process later after the new FCC rules are in place. Without waiving any rights, GTE proposes that the parties agree to hold off amending (or incorporating the impact of the decision into) the Terms and let the section 252(i) adoption proceed by maintaining the status quo until final new FCC rules are implemented (the "New Rules"), subject to the following package of interdependent terms:

1. GTE will continue to provide all UNEs called for under the Terms until the FCC issues the New Rules even though it is not legally obligated to do so.
2. Likewise, 0 1 Communications of Illinois, LLC agrees not to seek UNE "platforms," or "already bundled" combinations of UNEs.

2. *On November 5, 1999, the FCC released an order regarding a new list of UNEs that ILECs must offer to CLECs. At this time, the order is still not effective, GTE will comply with the requirements of this order when it becomes effective. Notwithstanding this, GTE does not waive, and hereby expressly reserves the right to challenge the legality of this order.

3. If the FCC does not issue New Rules prior to the expiration of the initial term of the Terms, GTE will agree to extend any new interconnection arrangement between the parties to the terms of this proposal until the FCC issues its New Rules.
4. By making this proposal (and by agreeing to any settlement or contract modifications that reflect this proposal), GTE does not waive any of its rights, including its rights to seek recovery of its actual costs and a sufficient, explicit universal service fund. Nor does GTE waive its position that, under the Courts decision, it is not required to provide **UNEs** unconditionally. Moreover, GTE does not agree that the UNE rates set forth in any agreement are just and reasonable and in accordance with the requirements of sections 251 and 252 of Title 47 of the United States Code.
5. The provisions of the contract that might be interpreted to require reciprocal compensation or payment as local traffic from GTE to the telecommunications carrier for the delivery of traffic to the Internet are not available for adoption and are not a part of the 252(i) agreement pursuant to FCC Rule 809 and paragraphs 1317 and 1318 of the First Report and Order.

GTE believes that the first four conditions above are adequately explained by the first part of this letter. The reason for the last condition is the FCC gave the **ILECs** the ability to except 252(i) adoptions in those instances where the cost of providing the service to the requesting carrier is higher than that incurred to ~~serve~~ the initial carrier or there is a technical incompatibility issue. The issue of reciprocal compensation for traffic destined for the Internet falls within FCC Rule 809. GTE never intended for Internet traffic passing through a telecommunications carrier to be included within the definition of local traffic and the corresponding obligation of reciprocal compensation. Despite the foregoing, some **forums** have interpreted the issue to require reciprocal compensation to be paid. This produces the situation where the cost of providing the service is not cost based under Rule 809 or paragraph 1318 of the First report and Order. As a result, that portion of the contract pertaining to reciprocal compensation is not available under this 252(i) adoption. In its place are provisions that exclude ISP Traffic from reciprocal compensation. Specifically, the definition of "Local Traffic" includes this provision: "Local Traffic excludes information service provider ("ISP") traffic (i.e., Internet, 900 – 976, etc)."

In sum, GTE's proposal as described above would maintain the status quo until the legal landscape is settled.

0 l's adoption of the US Xchange of Illinois, LLC Terms shall become effective upon filing of this letter with the Illinois Commerce Commission and remain in effect no longer than the date the US Xchange of Illinois, LLC Terms are terminated. The US Xchange of Illinois, LLC negotiated agreement is currently scheduled to expire on February 3, 2001.

Mr. Rudolph J. Geist
January 10, 2000
Page 4

As these Terms are being adopted by you pursuant to your statutory rights under section 252(i), GTE does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by GTE of the Terms does not in any way constitute a waiver by GTE of any claim it may have with respect to the 252(I) process, nor does it constitute a waiver of GTE's right to seek review of any Terms that are interpreted contrary to the law.

GTE contends that certain provisions of the Terms may be void or unenforceable as a result of the Courts decision of January 25, 1999 and the remand of the pricing rules to the United States Eighth Circuit Court of Appeals.

Should 0 1 Communications of Illinois, LLC attempt to apply such conflicting provisions, GTE reserves its rights to seek appropriate legal and/or equitable relief. Should any provision of the Terms be modified, such modification would likewise automatically apply to this 252(i) adoption.

0 1 Communications of Illinois, LLC does not concur with GTE's position as stated above ; nor does 0 1 waive any right it may have to reciprocal compensation for **internet** traffic. Please indicate by your countersignature on this letter your understanding of and commitment to the following three points only:

- (A) 0 1 Communications of Illinois, LLC adopts the Terms of the US Xchange of Illinois, LLC negotiated agreement for interconnection with GTE and in applying the Terms, agrees that 0 1 Communications of Illinois, LLC be substituted in place of US Xchange of Illinois, LLC in the Terms wherever appropriate.
- (B) 0 1 Communications of Illinois, LLC requests that notice to 0 1 Communications of Illinois, LLC es may be required under the Terms shall be provided as follows:


To : 0 1 Communications of Illinois, LLC
Attention: Mr. Rudolph J. Geist
Executive Vice President
770 L Street, Suite 960
Sacramento, CA 95614
Telephone number: 916 760-4603

- (C) 0 1 Communications of Illinois, LLC represents and warrants that it is a certified provider of local **dialtone** service in the State of Illinois, and that its adoption of the Terms will cover services in the State of Illinois only.

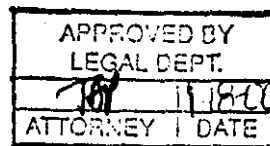
Mr. Rudolph J. Geist
January 10, 2000
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Sincerely,

GTE North Incorporated
GTE South incorporated

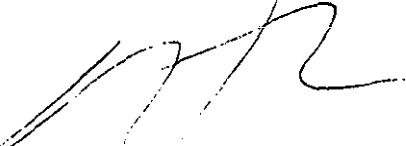


Connie Nicholas
Assistant. Vice President
Wholesale Markets-Interconnection



Reviewed and countersigned as to points A, B, and C:

0 1 Communications of Illinois, LLC



Mr. Rudolph J. Geist
Executive Vice President

c: D. Robinson -HQE03B73 - Irving, TX
E. Huffman - INAAKD -Westfield, IN

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ORIGINAL

INTERCONNECTION AGREEMENT

BETWEEN

**GTE NORTH INCORPORATED
GTE SOUTH INCORPORATED**

AND

NEXTEL WEST CORP.

FOR THE STATE OF ILLINOIS

ILLINOIS
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This Interconnection Agreement (the "Agreement"), is entered into by and between GTE North Incorporated and GTE South Incorporated (collectively "GTE"), with its address for purposes of this Agreement at 800 Hidden Ridge Drive, Irving, Texas 75038, and Nextel West Corp., in its capacity as a provider of two-way tireless service ("Nextel"), with its address for this Agreement at 1768 Old Meadow Road, McLean, Virginia 22102 (GTE and Nextel being referred to collectively as the "Parties" and individually as a "Party"). ~~This Agreement covers services in the State of Illinois only (the "State").~~

WHEREAS, interconnection between local providers is necessary and desirable for the mutual exchange and termination of traffic originating on each local provider's network; and

WHEREAS, the Parties desire to exchange such traffic and related signaling in a technically and economically efficient manner at defined and mutually agreed upon interconnection points; and

WHEREAS, the Parties wish to enter into an agreement to interconnect their respective telecommunications networks on terms that are fair and equitable to both Parties; and

WHEREAS, Section 251 of the Telecommunications Act of 1999 (the "Act") Imposes specific obligations on LECs with respect to the interconnection of their networks and physical collocation of equipment in LEC premises:

NOW, THEREFORE, In consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, GTE and Nextel hereby covenant and agree as follows:

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ARTICLE I
SCOPE AND INTENT OF AGREEMENT

Pursuant to this Agreement, the Parties will extend certain arrangements to one another within each area in which they both operate within the State for purposes of interconnection and the exchange of traffic between their respective end-user customers. This Agreement also governs the collocation of certain equipment of Nextel in the premises of GTE. This Agreement is an integrated package that reflects a balancing of interests critical to the Parties. This Agreement will be submitted to the Illinois Commerce Commission (the "Commission") for approval. The Parties agree that their entrance into this Agreement is without prejudice to and does not waive any positions they may have taken previously, or may take in the future, in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related to the same types of arrangements and/or matters related to GTE's cost recovery covered in this Agreement.

The services and facilities to be provided to Nextel by GTE in satisfaction of this Agreement may be provided pursuant to GTE tariffs and then current practices. Should such services and facilities be modified by tariff or by Order, including any modifications resulting from other Commission proceedings, federal court review or other judicial action, and unless otherwise specified herein, such modifications will be deemed to automatically supersede any rates and terms and conditions of this Agreement. The Parties shall cooperate with one another for the purpose of incorporating required modifications into this Agreement.

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ARTICLE II
DEFINITIONS

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1. **General Definitions.** Except as otherwise specified herein, the following definitions shall apply to all Articles and Appendices contained in this Agreement. Additional definitions that are specific to the matters covered in a particular Article may appear in that Article. To the extent that there may be any conflict between a definition set forth in this Article II and any definition in a specific Article or Appendix, the definition set forth in the specific Article or Appendix shall control with respect to that Article or Appendix.

- 1.1 Act-the Telecommunications Act of 1996, Public Law 104-104 of the 104th United States Congress effective February 8, 1996.
- 1.2 **Affiliate** - a person, corporation or other legal entity that, directly or indirectly, owns or controls a Party, or is owned or controlled by, or is under common ownership or control with a Party.
- 1.3 **Answer Supervision** - an off-hook supervisory signal.
- 1.4 **Applicable Law** - all laws, statutes, common law, regulations, ordinances, codes, rules, guidelines, orders, permits, and approvals of any Governmental Authority, which apply or relate to the subject matter of this Agreement.
- 1.5 **Automatic Location Identification/Data Management System (ALI/DMS)** - the emergency services (E911/911) database containing customer location information (including name, address, telephone number, and sometimes special information from the local service provider) used to process subscriber access records into Automatic Location Identification (ALI) records. From this database, records are forwarded to GTE's AU Gateway for downloading by local ALI database systems to be available for retrieval in response to ANI from a Q-I-I call. Also, from this database, GTE will upload to its selective routers the selective router AU (SR/ALI) which is used to determine to which Public Safety Answering Point ("PSAP") to route the call.
- 1.6 **Automated Message Accounting (AMA)** - the structure inherent in switch technology that initially records telecommunication message information. AMA format is contained in the Automated Message Accounting document, published by Bellcore as GR-1 100-CORE which defines the industry standard for message recording.
- 1.7 **Automatic Number Identification (ANI)** - the number transmitted through the network identifying the calling party.
- 1.8 **Bellcore** - an organization owned by Scientific Applications International Corp. (SAIC). The organization conducts research and development projects for its owners, including development of new telecommunications services. Bellcore also provides certain centralized technical and management services for the regional holding companies and also provides generic requirements for the telecommunications industry for products, services and technologies.
- 1.9 **Business Day** - Monday through Friday, except for holidays on which the U.S. mail is not delivered.
- 1.10 **Central Office Switch** - a switch used to provide telecommunications services including (1) "End Office Switches" which are Class 5 switches from which end-user Exchange Services are directly connected and offered, and (2) "Tandem Office Switches" which are Class 4 switches which are used to connect and switch trunk circuits between and among

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central office switches. Central office switches may be employed as combination end office/tandem office switches (combination Class 5/Class 4).

- 1.11 **Centralized Message Distribution System (CMOS)** - the billing record and clearing house transport system that the Regional Sell Operating Companies ("RBOCs") and other incumbent LECs use to efficiently exchange out collects and in collects as well as Carbr Access Billing System ("CABS") records.
- 1.12 **CLL Codes-Common Language Location Identifier Codes.**
- 1.13 **Commercial Mobile Radio Services (CMRS)** - a radio communication service between mobile stations or receivers and land stations, or by mobile stations communicating among themselves that is provided for profit and that makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public.
- 1.14 **Commission** - the Public Utilities/Public Service Commission of the state in which the agreement is filed.
- 1.15 **Common Channel Signaling (CCS)** - a high-speed specialized packet-switched communications network that is separate (out-of-band) from the public packet-switched and message networks. CCS carries address signaling messages for individual trunk circuits and/or database-related services between Signaling Points in the CCS network using SS7 signaling protocol.
- 1.16 **Competitive Local Exchange Carrier (CLEC)** - any company or person authorized to provide local exchange services in competition with an ILEC.
- 1.17 **Compliance** - environmental and safety laws and regulations are based upon a federal regulatory framework, with certain responsibilities delegated to the States. An environmental/safety compliance program may include review of applicable laws/regulations, development of written procedures, training of employees and auditing.
- 1.18 **Conversation Time** - the time that both Parties' equipment is used for a completed call, measured from the receipt of Answer Supervision to the receipt of Disconnect Supervision.
- 1.19 **Currently Available** - existing as part of GTE's network at the time of the requested order or service and does not include any service, feature, function or capability that GTE either does not provide to itself or to its own end users, or does not have the capability to provide.
- 1.20 **Customer** - GTE or Nextel, depending on the context and which Party is receiving the service from the other Party.
- 1.21 **Disconnect Supervision** - an on-hook supervisory signal sent at the completion of a call.
- 1.22 **DS-1** - a service carried at digital signal rate of 1.544 Mbps.
- 1.23 **DS-3** - a service carried at digital signal rate of 44.736 Mbps.
- 1.24 **Electronic File Transfer** - a system or process which utilizes an electronic format and protocol to send/receive data files.
- 1.25 **E-911 Service** - a method of routing 911 calls to a Public Service Answering Point that uses a customer location database to determine the location to which a call should be

outed. E-9-1-1 service includes the forwarding of the **caller's Automatic Number Identification (ANI)** to the PSAP where the **ANI** is used to **retrieve and display** the **Automatic Location Identification (ALI)** on a terminal screen at the **answering Attendant's position**. It usually includes **selective routing**.

- 1.26 **Exchange Message Record (EMR)** - an industry **standard record** used to exchange **telecommunications message information** among **CLECs** for **billable, non-billable, sample, settlement and study date**. **EMR format** is **defined** in **BR-010-200-010 CRIS Exchange Message Record**, published by **Bellcore**.
- 1.27 **Exchange Service** - all **basic access line services**, or any other **services offered** to end users **which** provide end **users with** a telephonic **connection** to, and a unique **telephone number** address on, the **Public Switched Telecommunications Network (PSTN)**, and **which** enable such end users to place or **receive** calls to all other **stations** on the PSTN.
- 1.28 **Expanded Interconnection Service (EIS)** - a service that **provides interconnecting** carriers **with** the capability to terminate **basic fiber optic transmission facilities**, including optical terminating equipment and **multiplexers**, at GTE's wire **centers** and **access tandems** and Interconnect those **facilities with the facilities** of GTE. Microwave is available on a case-by-case **basic** where feasible.
- 1.29 **Facility** - all buildings, equipment structures and other items located on a single site or **contiguous** or adjacent sites owned or operated by the same persons or person as used in Article III, Section 44.
- 1.30 **FCC** - the Federal **Communications Commission**.
- 1.31 **Generator** - under the Resource Conservation Recovery Act (**RCRA**), the **person** whose act produces a hazardous waste (40 CFR 261) or whose act **first** causes a **hazardous waste** to become subject to regulation. The generator **is legally** responsible for the proper management and **disposal** of hazardous **wastes** in accordance **with** regulations (see reference in **Article III**, Section 44).
- 1.32 **GTOC** - GTE Telephone **Operating** Company.
- 1.33 **Hazardous Chemical** - as defined in the U.S. Occupational Safety and Health (OSHA) hazard communication standard (29 CFR 1910.1200). any chemical **which** is a **health hazard** or **physical hazard**.
- 1.34 **Hazardous Waste** - as described in Resource Conservation Recovery Act (RCRA), a **solid waste(s)** which may cause, or **significantly** contribute to an increase in mortality or illness or pose a substantial hazard to human health or the environment when **improperly** treated, stored, transported or disposed of or **otherwise** managed because of **its** quantity, concentration or physical or chemical **characteristics**.
- 1.35 **Imminent Danger**-as described in the Occupational Safety and **Health** Act and expanded for environmental matters, any **conditions or practices** at a **facility which** are such that a danger **exists** which could reasonably be expected to cause death or serious harm or **significant** damage to the environment or natural resources.
- 1.36 **Incumbent Local Exchange Carrier (ILEC)** - any local exchange carrier that was as of February 8, 1996, deemed to be a member of the Exchange Carrier Association as set forth in 47 C.F.R. 569.601 (b) of the FCC's regulations.
- 1.37 **Interconnection Facility** - see "Internetwork Facilities".

- 1.36 **Interconnection Point (IP)** - the physical point on the network ~~where the~~ two parties interconnect. The "IP" is the demarcation point between ownership of the **transmission facility**.
- 1.39 **Interexchange Carrier (IXC)** - a telecommunications service provider authorized by the FCC to provide interstate long distance communications **services between LATAs and** authorized by the State to provide inter- and/or intraLATA long distance ~~wmmuniatbna~~ **services within** the State.
- 1.40 **Inter-network Facilities** - the physical **connection** of separate **pieces** of equipment, **transmission facilities**, etc., within, between and among networks, for the ~~trensmiesbn~~ and **routing** of exchange **service** and exchange **access**.
- 1.41 **ISDN User Part (ISUP)** - a part of the **SS7** protocol that **defines** call setup messages and call **takedown** messages.
- 1.42 **Line Information Data Base (LIDB)** - one or all, as the context may require, of the Line **information** databases owned **individually** by GTE and other **entities which** provide, among other things, calling card **validation** functionality for telephone line number cards **issued** by GTE and other entities. A LIDB also contains **validation** data for collect and third number-billed calls; i.e., Silted Number Screening.
- 1.43 **Line Side** - refers to an end **office** switch connection that has been programmed to treat the circuit as a local line connected to an ordinary telephone station set. **Line side** connections offer only those **transmission** and signaling **features** appropriate for a **connection** between an end **office** and an ordinary telephone set.
- 1.44 Local Access and Transport Area (LATA) - a **geographic area** for the provision and administration of communications service; i.e., **intraLATA** or **interLATA**.
- 1.45 Local Exchange **Carrier** (LRC) - any company **certified** by the Commission to provide local exchange telecommunications **service**.
- 1.46 Local Exchange Routing Guide (**LERG**) - the **Belcore** reference customarily used to identify NPA-NXX **routing** and homing **information**, as well as network element and equipment designation.
- 1.47 Local Provider - is used in this Agreement as a generic reference to any provider of local **services**, i.e., **ILECs, CLECs, CMRS Carriers**, **This** includes the **Parties** to **this** Agreement.
- 1.48 Local **Traffic** - for purposes of compensation between **Parties**, **traffic** that is originated by an end user of one Party and terminates to an end user of the other Party within the same **MTA** (Major Trading Area) and, for GTE-originated **traffic**, **within** the same **LATA**, provided that the end user of **Nextel** receives service on a **two-way** wireless mobile basis. **Local** Traffic excludes Information Service Providers ("**ISP**") **traffic** (e.g., Internet, paging, **900-976**, etc.).
- 1.49 Main Distribution **Frame (MDF)** - the **distribution** frame used to interconnect cable pairs and line trunk equipment terminating on a switching system.
- 1.50 Meet-Point **Billing (MPB)** - refers to an arrangement whereby two **LECs** jointly provide the transport element of a switched access **service** to one of the **LEC's** end **office** switches, **with** each LEC **receiving** an appropriate share of the transport element revenues as defined by the effective access tariffs.

- 1.51 **Mid-Span Fiber Meet** - an **interconnection architecture** whereby **two carriers' fiber transmission facilities** meet at a mutually agreed-upon IP.
- 1.52 **WC or MTSO** -the Mobile Switching Center or Mobile **Telecommunications Switching Office** used by a CMRS carrier in performing **originating and terminating functions** for calls to or from **end-user customers** of the CMRS carrier.
- 1.53 **MTA** - Major Trading Area es **defined** by the FCC rules, **Part 24.202(a)**.
- 1.54 **Multiple Exchange Carrier Access Billing (MECAB)** - refers to the document prepared by the **Billing Committee** of the **Ordering and Billing Forum ("OBF")**, which functions under the auspices of the Carrier **Liaison Committee ("CLC")** of the **Alliance for Telecommunications Industry Solutions ("ATIS")**. The **MECAB** document, published by **Belcore** as **Special Report SR-BDS-000983**, contains the recommended **guidelines** for the tilling of an access service **provided** by two or more **LECs**, or by one LEC in **two** or more states **within** a single **LATA**.
- 1.55 **Multiple Exchange Carriers Ordering and Design Guidelines for Access Services . Industry Support Interface (MECOD)** - a document developed by the **Ordering/Provisioning Committee** under the **auspices** of the **Ordering and Billing Forum ("OBF")**, which functions under the auspices of the **Carrier Liaison Committee ("CLC")** of the **Alliance for Telecommunications Industry Solutions ("ATIS")**. The **MECOD** document, published by **Belcore** as **Special Report SR-STS-002643**, **establish** methods for processing orders for access **service** which **is** to be provided by two or more **LECs**.
- 1.56 **911 Service** - a universal telephone number which gives the **public** direct **access** to the **PSAP**. **Basic 911 service** collects 911 calls from one or more **local** exchange switches that serve a geographic area. The calls are then sent to the correct **authority** designated to receive such calls.
- 1.57 **North American Numbering Plan (NANP)** -the system of telephone numbering employed in the United States, Canada, and Caribbean countries that employ NPA 809.
- 1.58 **Numbering Plan Area (NPA)** - also **sometimes** referred to as an area code, **is** the three **digit** indicator which **is defined** by the "A", "B", and "C" **digits** of each **10-digit** telephone number **within** the **NANP**. Each NPA contains 800 **possible** NXX Codes. **There** are two general categories of NPA, "Geographic NPAs" and "Non-Geographic NPAs". A **Geographic NPA** **is** associated **with** a defined geographic area, and all telephone numbers bearing such NPA are associated with **services provided within** that geographic area. A **Non-Geographic NPA**, also known as a "Service Access Code" or "SAC Code" **is** typically **associated with** a **specialized telecommunications** service **which** may be provided across multiple geographic NPA areas. **800, 900, 700, and 888** are examples of **Non-Geographic NPAs**.
- 1.59 **NXX, NXX Code, Central Office Code or CO Code** - the three **digit** **switch** **entity** indicator **which is defined** by the "D", "E", and "F" **digits** of a **10-digit** telephone number within the **NANP**. Each NXX Code contains 10,000 **station** numbers.
- 1.60 **Owner and Operator** - as used in OSHA regulations, owner **is** the legal **entity**, including a lessee, which exercises control over management and record keeping functions relating to a building or **facility**. As used in the Resource Conservation and Recovery Act (**RCRA**), operator means the person responsible for the overall (or part of the) operations of a **facility** (see reference in Article III, **Section 44**).
- 1.61 **Party/Parties** - GTE and/or **Nextel**.

- 1.62 Provider - GTE or **NexTel** depending on the context and which Party is providing the service to the other Party.
- 1.63 **Public Safety Answering Point (PSAP)** - an answering location for 9-1-1 calls originating in a given area. A PSAP may be designated as Primary or Secondary, which refers to the order in which calls are directed for answering. Primary PSAPs respond first; Secondary PSAPs receive calls on a transfer basis only, and generally serve as a centralized answering location for a particular type of emergency call. PSAPs are staffed by employees of Emergency Response Agencies ("ERAs") such as police, fire or emergency medical agencies or by employees of a common bureau serving a group of such entities.
- 1.84 Rate Center - the specific geographic point and corresponding geographic area that are associated with one or more particular NPA-NXX Codes that have been assigned to a LEC for its provision of Exchange Services. The geographic point is identified by a specific Vertical and Horizontal (V&H) coordinate that is used to calculate distance-sensitive end user traffic to/from the particular NPA-NXXs associated with the specific Rate Center.
- 1.65 Routing Point - denotes a location that a LEC has designated on its network as the homing (routing) point for traffic that terminates to Exchange Services provided by the LEC that bear a certain NPA-NXX designation. The Routing Point is used to calculate airline mileage for the distance-sensitive transport element charges of Switched Access Services. Pursuant to **Bellcore Practice BR795-100-100**, the Routing Point may be an end office location, or a "LEC Consortium Point of Interconnection." The Routing Point must be in the same LATA as the associated NPA-NXX.
- 1.88 Service Control Point (SCP) - the node in the signaling network to which informational requests for service handling, such as routing, are directed and processed. The SCP is a real time database system that based on a query from the SSP, performs subscriber or application-specific service logic, and then sends instructions back to the SSP on how to continue call processing.
- 1.87 Service Switching Point (SSP) - a Signaling Point that can launch queries to databases and receive/interpret responses used to provide specific customer services.
- 1.88 Signaling Point (SP) - a node in the CCS network that originates and/or receives signaling messages, or transfers signaling messages from one signaling link to another, or both.
- 1.69 Signaling System 7 (SS7) - the signaling protocol, Version 7, of the CCS network, based upon American National Standards Institute ("ANSI") standards.
- 1.70 Signal Transfer Point (STP) - a packet switch in the CCS network that is used to route signaling messages among SSPs, SCPs and other STPs in order to set up calls and to query databases for advanced services. GTE's network includes mated pairs of local and regional STPs. STPs are provided in pairs for redundancy. GTE STPs conform to ANSI T1.111-8 standards.
- 1.71 Subsidiary - a corporation or other legal entity that is majority owned by a Party.
- 1.72 Synchronous Optical Network (SONET) - synchronous electrical ("STS") or optical channel ("OC") connections between LECs.
- 1.73 Switched Access Service - the offering of facilities for the purpose of the origination or termination of traffic to or from Exchange Service customers in a given area pursuant to a

switched access tariff. Switched Access Services include: Feature Group A, Feature Group B, Feature Group C, Feature Group D, 800 access and 900 access services.

- 1.74 **Telecommunications Services** - the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.
- 1.75 **Third Party Contamination - environmental** pollution that is not generated by either Party but results from off-site activities impacting a facility.
- 1.76 **Trunk Side** - refers to a central office switch connection that is capable of, and has been programmed to treat the circuit as, connecting to another switching entity, for example, to another central office switch. Trunk side connections offer those transmission and signaling features appropriate for the connection of switching entities and cannot be used for the direct connection of ordinary telephone station sets.
- 1.77 **Two-Way Wireless Mobile Telecommunications Service Provider** - a CMRS provider of telephone exchange end exchange access services. CMRS providers are authorized pursuant to 47 U.S.C. § 332 (d) (1) as interpreted by the FCC and the federal courts.
- 1.78 **Undefined Terms** - terms that may appear in this Agreement which are not defined. Parties acknowledge and agree that any such terms shall be construed in accordance with customary usage in the telecommunications industry as of the effective date of this Agreement.
- 1.79 **Vertical Features** (including CLASS Features) -vertical services and switch functionalities provided by GTE. including: Automatic Call Back; Automatic Recall; Call Forwarding Busy Line/Don't Answer; Call Forwarding Don't Answer; Call Forwarding Variable; Call Forwarding - Busy Line; Call Trace; Call Waiting; Call Number Delivery Blocking Per Call; Calling Number Blocking Per Line; Cancel Call Waiting; Distinctive Ringing/Call Waiting; incoming Call Line Identification Delivery; Selective Call Forward; Selective Call Rejection; Speed Calling; and Three Way Calling/Call Transfer.
- 1.80 **Wire Center** - a building or space within a building that serves as an aggregation point on a LEC's network, where transmission facilities and circuits are connected or switched. "Wire center" can also denote a building in which one or more Central Offices, used for the provision of exchange services and access services, are located.

ARTICLE III GENERAL PROVISIONS

1. Scope of General Provisions. Except as may otherwise be set forth in a particular Article or Appendix of this Agreement, in which case the provisions of such Article or Appendix shall control, these General Provisions apply to all Articles and Appendices of this Agreement.
2. Term and Termination.
 - 2.1 Term. Subject to the termination provisions contained in this Agreement, the term of this Agreement shall be one (1) year from the effective date of the Agreement and shall continue in effect for consecutive six (6) month terms until either Party gives the other Party at least ninety (90) calendar days written notice of termination, which termination shall be effective at the end of the then-current term. In the event notice is given less than 90 calendar days prior to the end of the current term, this Agreement shall remain in effect for 90 calendar days after such notice is received, provided, that in no case shall the term be extended beyond 90 calendar days after the end of the current term.
 - 2.2 Post-termination Arrangements. Except in the case of termination as a result of either Party's default or a termination upon sale, for service arrangements made available under this Agreement and existing at the time of termination, those arrangements may continue without interruption (a) under a new agreement voluntarily executed by the Parties; (b) standard terms and conditions approved and made generally effective by the Commission, if any; (c) tariff terms and conditions made generally available to all CLECs; or (d) any rights under Section 252(f) of the Act.
 - 2.3 Termination Upon Default. Either Party may terminate this Agreement in whole or in part in the event of a default by the other Party; provided however, that the non-defaulting Party notifies the defaulting party in writing of the alleged default and that the defaulting Party does not cure the alleged default within sixty (60) calendar days of receipt of written notice thereof. Default is defined to include:
 - (a) A Party's insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party; or
 - (b) A Party's refusal or failure in any material respect to perform its obligations under this Agreement, or the violation of any of the material terms or conditions of this Agreement.
 - 2.4 Termination Upon Sale. Notwithstanding anything to the contrary contained herein, a Party may terminate this Agreement as to a specific operating area or portion thereof of such Party if such Party sells or otherwise transfers the area or portion thereof. The Party shall provide the other Party with at least ninety (90) calendar days' prior written notice of such termination, which shall be effective on the date specified in the notice. Notwithstanding termination of this Agreement as to a specific operating area, this Agreement shall remain in full force and effect in the remaining operating areas.
 - 2.5 Liability on Termination. Termination of this Agreement, or any part hereof, for any cause shall not release either Party from any liability which at the time of termination had already accrued to the other Party or which thereafter accrues in any respect to any act or omission occurring prior to the termination or from an obligation which is expressly stated in this Agreement to survive termination.

3. **Amendments.** Any amendment, modification, or supplement to this Agreement must be in writing and signed by an authorized representative of each Party. The term "this Agreement" shall include future amendments, modifications, and supplements.
4. **Assignment.** Any assignment by either Party of any right, obligation, or duty, in whole or in part, or of any interest, without the written consent of the other party shall be void, except that either Party may assign all of its right, and delegate its obligations, liabilities and duties under this Agreement, either in whole or in part, to any entity that is or that was immediately preceding such assignment, a Subsidiary or Affiliate of that Party without consent, but with written notification, the effectiveness of an assignment shall be conditioned upon the assignee's written assumption of the rights, obligations, and duties of the assigning Party.
5. **Authority.** Each person whose signature appears on this Agreement represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.
6. **Responsibility for Payment.** GTE may charge Nextel and Nextel will pay GTE's deposit before GTE is required to perform under this agreement if Nextel has not established a good payment history with GTE. Such deposit will be calculated based on GTE's estimated two-month charges to Nextel. Interest will be paid on the deposit in accordance with state requirements for end user deposits.
7. **Billing and Payment.** Except as provided elsewhere in this Agreement and where applicable, in conformance with MECAB and MECOD, Nextel and GTE agree to exchange all information to accurately, reliably, and properly order and bill for features, functions and services rendered under this Agreement.
 - 7.1 **Dispute.** If one Party disputes a billing statement issued by the other Party, the billed Party shall notify Provider in writing regarding the nature and the basis of the dispute within six (6) months of the statement date or the dispute shall be waived. The Parties shall diligently work toward resolution of all billing issues.
 - 7.2 **Late Payment Charge.** If any undisputed amount due on the billing statement is not received by Provider on the payment due date, Provider may charge, and Customer agrees to pay, at Provider's option, interest on the past due balance at a rate equal to the lesser of the interest rates set forth in the applicable GTE/Contel state access tariffs or the GTOC/GSTC FCC No. 1 tariff, one and one-half percent (1½%) per month or the maximum nonusurious rate of interest under applicable law. Late payment charges shall be included on the next statement.
 - 7.3 **Due Date.** Payment is due thirty (30) calendar days from the bill date.
 - 7.4 **Back Billing.** Parties shall not bill for services provided pursuant to this Agreement more than six (6) months prior to the date of the bill unless notification of a billing problem with respect to such services has been provided. In those circumstances, back billing shall be limited to six (6) months prior to the date Parties were notified of the billing problem.
 - 7.5 **Audits.** Either Party may conduct an audit of the other Party's books and records, pertaining to the Services provided under this Agreement, no more frequently than once per twelve (12) month period, to evaluate the other Party's accuracy of billing, data and invoicing in accordance with this Agreement. Any audit shall be performed as follows: (i) following at least thirty (30) Business Days prior written notice to the audited Party; (ii) subject to the reasonable scheduling requirements and limitations of the audited Party; (iii) at the auditing Party's sole cost and expense; (iv) of a reasonable scope and duration; (v) in a manner so as not to interfere with the audited Party's business operations; and (vi) in compliance with the audited Party's security rules.

- a. **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the respective successors and permitted assigns of the Parties.
9. **Compliance with Laws and Regulations.** Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement.

10. **Confidential Information.**

- 10.1 **Identification.** Either Party may disclose to the other proprietary or confidential customer, technical, or business information in written, graphic, oral or other tangible or intangible forms ("Confidential Information"). In order for information to be considered Confidential Information under this Agreement, it must be marked "Confidential" or "Proprietary," or bear a marking of similar import. Orally or visually disclosed information shall be deemed Confidential Information only if contemporaneously identified as such and reduced to writing and delivered to the other Party with a statement or marking of confidentiality within thirty (30) calendar days after oral or visual disclosure.

Notwithstanding the foregoing, preorders and all orders for services placed by Nextel pursuant to this Agreement, and information that would constitute customer proprietary network information of Nextel end user customers pursuant to the Act and the rules and regulations of the FCC, as well as recorded usage information with respect to Nextel and users, whether disclosed by Nextel to GTE or otherwise acquired by GTE in the course of its performance under this Agreement, and where GTE is the NANP Number Plan Administrator, Nextel information submitted to GTE in connection with such responsibilities shall be deemed Confidential Information of Nextel for all purposes under this Agreement whether or not specifically marked or designated as confidential or proprietary.

- 10.2 **Handling.** In order to protect such Confidential Information from improper disclosure, each Party agrees:
 - (a) That all Confidential Information shall be and shall remain the exclusive property of the source;
 - (b) To limit access to such Confidential information to authorized employees who have a need to know the Confidential information for performance of this Agreement;
 - (c) To keep such Confidential Information confidential and to use the same level of care to prevent disclosure or unauthorized use of the received Confidential Information as it exercises in protecting its own Confidential Information of a similar nature;
 - (d) Not to copy, publish, or disclose such Confidential information to others or authorize anyone else to copy, publish, or disclose such Confidential information to others without the prior written approval of the source;
 - (e) To return promptly any copies of such Confidential Information to the source at its request; and
 - (f) To use such Confidential information only for purposes of fulfilling work or services performed hereunder and for other purposes only upon such terms as may be agreed upon between the Parties in writing.

- 10.3 **Exceptions.** These obligations shall not apply to any Confidential information that was legally in the recipient's possession prior to receipt from the source, was received in good faith from a third party not subject to a confidential obligation to the source, now or later becomes publicly known through no breach of confidential obligation by the recipient, was developed by the recipient without the developing persons having access to any of the Confidential information received in confidence from the source, or that is required to be disclosed pursuant to subpoena or other process issued by a court or administrative agency having appropriate jurisdiction, provided, however, that the recipient shall give prior notice to the source and shall reasonably cooperate if the source deems it necessary to seek protective arrangements.
- 10.4 **Survival.** The obligation of confidentiality and use with respect to Confidential information disclosed by one Party to the other shall survive any termination of this Agreement for a period of three (3) years from the date of the initial disclosure of the Confidential information.
11. **Consent.** Where consent, approval, or mutual agreement is required of a Party, it shall not be unreasonably withheld or delayed.
12. **Fraud.** Each Party assumes responsibility for all fraud associated with its end user customers and accounts. Neither Party shall bear responsibility for, nor be required to investigate or make adjustments to the other Party's account in cases of fraud.
13. **Reimbursement of Expenses** in performing under this Agreement GTE may be required by the FCC, Commission or court of competent jurisdiction to make expenditures or otherwise incur costs that are not otherwise reimbursed under this Agreement. In such event GTE is entitled to reimbursement from Nextel for its proportionate share of such costs. For all such costs and expenses, GTE shall receive through non-recurring charges ("NRCs") the actual costs and expenses incurred, including labor costs and expenses, overhead and fixed charges, and may include a reasonable contribution to GTE's common costs.
14. **Dispute Resolution.**
- 14.1 **Alternative to Litigation.** Except as provided under Section 252 of the Act with respect to the approval of this Agreement by the Commission, the Parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following alternative dispute resolution procedures as the sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach.
- 14.2 **Negotiations.** At the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise discoverable, be discovered or otherwise admissible, be admitted in evidence, in the arbitration or lawsuit.

- 14.3 **Arbitration.** If the negotiations do not resolve the dispute within sixty (60) Business Days of the initial written request, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association except that the Parties may select an arbitrator outside American Arbitration Association rules upon mutual agreement. A Party may demand arbitration in accordance with the procedures set out in these rules. Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this section. Each Party may submit in writing to a Party, and that Party shall so respond to, a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following: interrogatories, demands to produce documents, or requests for admission. Each Party is also entitled to take the oral deposition of one individual of another Party. Additional discovery may be permitted upon mutual agreement of the Parties. The arbitration hearing shall be commenced within sixty (60) Business Days of the demand for arbitration. The arbitration shall be held in the State capital or another mutually agreeable location. The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) Business Days after the close of hearings. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.
- 14.4 **Expedited Arbitration Procedures.** If the issue to be resolved through the negotiations referenced in Section 14.2 directly and materially affects service to either Party's and user customers, then the period of resolution of the dispute through negotiations before the dispute is to be submitted to binding arbitration shall be five (5) Business Days. Once such a service affecting dispute is submitted to arbitration, the arbitration shall be conducted pursuant to the expedited procedures rules of the Commercial Arbitration Rules of the American Arbitration Association (i.e., rules 53 through 57).
- 14.5 **Costs.** Each Party shall bear its own costs of these procedures. A Party seeking discovery shall reimburse the responding Party the costs of production of documents. (including search time and reproduction costs). The Parties shall equally split the fees of the arbitration and the arbitrator.
- 14.6 **Continuous Service** The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure, and the Parties shall continue to perform their obligations, including making payments, in accordance with this Agreement.
15. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, negotiations, proposals, and representations, whether written or oral, and all contemporaneous oral agreements, negotiations, proposals, and representations concerning such subject matter. No representations, understandings, agreements, or warranties, expressed or implied, have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
16. **Expenses.** Except as specifically set out in this Agreement, each Party shall be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.
17. **Force Majeure.** In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by Customer, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such

prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); **provided however**, that the Party so affected shall use **diligent efforts** to avoid or remove such causes of nonperformance and both Parties shall **proceed** whenever such causes are removed or cease.

18. **Good Faith Performance.** In the performance of their obligations under this Agreement, the Parties shall act in good faith. In situations in which notice, consent, approval or similar action by a Party is permitted or required by any provision of this Agreement, such action shall not be unreasonably delayed, withheld or conditioned.
19. **Governing Law.** This Agreement shall be governed by and construed in accordance with the Telecommunications Act of 1996, applicable federal and (to the extent not inconsistent therewith) domestic laws of the state where the services are provided or the facilities reside and shall be subject to the exclusive jurisdiction of the courts therein.
20. **Standard Practices.** The Parties acknowledge that GTE shall be adopting some industry standard approaches and/or establishing its own standard approaches to various requirements hereunder applicable. Nextel agrees that GTE may implement such approaches to satisfy any GTE obligations under this Agreement.
21. **Headings.** Headings in this Agreement are inserted for convenience and identification only and shall not be considered in the interpretation of this Agreement.
22. **Independent Contractor Relationship.** The persons provided by each Party shall be solely that Party's employees and shall be under the sole and exclusive direction and control of that Party. They shall not be considered employees of the other Party for any purpose. Each Party shall remain an independent contractor with respect to the other and shall be responsible for compliance with all laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions and payment of wages. Each Party shall also be responsible for payment of taxes, including federal, state and municipal taxes, chargeable or assessed with respect to its employees, such as Social Security, unemployment, workers' compensation, disability insurance, and federal and state withholding. Each Party shall indemnify the other for any loss, damage, liability, claim, demand, or penalty that may be sustained by reason of its failure to comply with this provision.
23. **Law Enforcement Interface.**
 - 23.1 Except to the extent not available in connection with GTE's operation of its own business, GTE shall provide seven day a week/twenty-four hour a day assistance to law enforcement persons for emergency taps, assistance involving emergency traces and emergency information retrieval on customer invoked CLASS services.
 - 23.2 GTE agrees to work jointly with Nextel in security matters to support law enforcement agency requirements for taps, traces, court orders, etc. Charges for providing such services for Nextel customers will be billed to Nextel.
 - 23.3 GTE will, in non emergency situations, inform the requesting law enforcement agencies that the end user to be wire tapped, traced, etc. is a Nextel Customer and shall refer them to Nextel.
 - 23.4 Subsequent to the execution and approval of this Agreement by the Commission, the parties shall establish a separate contract or authorization agreement specific to the Nuisance Call Bureau (NCB) and Security Control Center (SCC) for CLEC procedures which will be in compliance with applicable state and federal laws.

24. Liability and Indemnity.

- 24.1 Indemnification. Subject to the limitations set forth in **Section 24.4 of this Article III**, each Party agrees to **release**, indemnify, defend, and hold harmless the other Party from all **losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees**, whether suffered, made, instituted, or asserted by any other Party or person, for **invasion of privacy, personal injury to or death of any person or persons, or for losses, damages, or destruction of property, whether or not owned by others, proximately caused by the indemnifying Party's negligence or willful misconduct. regardless of form of action.** The indemnified Party agrees to **notify** the other Party promptly, in **writing**, of any **written claims, lawsuits, or demands for which it is claimed that the indemnifying Party is responsible under this Section and to cooperate in every reasonable way to facilitate defense or settlement of claims.** The indemnifying Party shall have complete control over defense of the **case** and over the terms of any Proposed **settlement or compromise** thereof. The indemnifying Party shall not **be liable under this Section for settlement by the indemnified Party or any claim, lawsuit, or demand, if the indemnifying Party has not approved the settlement in advance, unless the indemnifying Party has had the defense of the claim, lawsuit, or demand tendered to it in writing and has failed to assume such defense.** In the event of such failure to assume defense, the Indemnifying Party shall **be** liable for any reasonable settlement made by the **indemnified** Party without approval of the **indemnifying** Party.
- 24.2 End User and Content-Related Claims. Each Party agrees to release, **indemnify**, defend, and hold harmless the other Party, **its affiliates**, and any third-party **provider** or operator of **facilities** involved in the **provision** of services or **facilities** under **this Agreement (collectively, the "Indemnified Party")** from all losses, claims, demands, damages, expenses, suits, or other **actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees**, suffered, made, **instituted**, or asserted by either Party's end users against an **Indemnified Party arising from services or facilities.** Each Party further agrees to release, indemnify, defend, and hold harmless the **Indemnified** Party from all losses, claims, demands, damages, expenses, sub, or other **actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees**, suffered, made, instituted, or asserted by any third party against an **Indemnified Party arising from or in any way related to actual or alleged defamation, libel, slander, interference with or misappropriation of proprietary or creative right, or any other injury to any person or property arising out of content transmitted by the Indemnified Party or such Party's end users, or any other act or omission of the Indemnified Party or such Party's end users.**
- 24.3 DISCLAIMER. EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT **THE PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES TO CUSTOMER CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES OR FACILITIES PROVIDED UNDER THIS AGREEMENT. PROVIDER DISCLAIMS, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.**
- 24.4 Limitation of Liability. Each Party's **liability**, whether in contract, tort or **otherwise**, shall be limited to direct damages, which shall not exceed the **monthly** charges, plus any related costs/expenses either Party may recover, including those under **Section 13** above, for the services or **facilities** for the month during which the claim of liability arose. Under no circumstance shall **either** Party be responsible or liable for indirect, **incidental**, or consequential damages, including, but not limited to, economic loss or lost business or **profits**, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or any accessories attached thereto, delay, error, or loss of data. Should **either** Party provide **advice, make** recommendations, or supply other

analysis related to the services or facilities described in the Agreement, this limitation of liability shall apply to provision of such advice, recommendations, and analysts.

- 24.5 **Intellectual Property.** Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other based on or arising from any claim, demand, or proceeding by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision or use of any facilities by either Party under this Agreement constitutes direct or contributory infringement, or misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any third party.
25. **Multiple Counterparts.** The Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.
26. **No Offer.** The Agreement will be effective only upon execution and delivery by both Parties and approval by the Commission in accordance with Section 252 of the Act.
27. **No Third Party Beneficiaries.** Except as may be specifically set forth in the Agreement, the Agreement does not provide and shall not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.
20. **Notices.** Any notice to a Party required or permitted under this Agreement shall be in writing and shall be deemed to have been received on the date of service if served personally, on the date receipt is acknowledged in writing by the recipient if delivered by regular U.S. mail, or on the date stated on the receipt if delivered by certified or registered mail or by a courier service that obtains a written receipt. Upon prior immediate oral agreement of the parties' designated recipients identified below, notice may also be provided by facsimile, Internet or electronic messaging system, which shall be effective if sent before 5:00 p.m. on that day, or if sent after 5:00 p.m. it will be effective on the next Business Day following the date sent. Any notice shall be delivered using one of the alternatives mentioned in this section and shall be directed to the applicable address indicated below or such address as the Party to be notified has designated by giving notice in compliance with this section:

If to GTE:

GTE North Incorporated
Attention: Assistant Vice President/Associate General Counsel
Business Development & Integration
600 Hidden Ridge - E03J43
Irving, TX 75038
Telephone number: 972/718-6361
Facsimile number: 972/718-3403

copy to:

GTE North Incorporated
Attn: Director-Wholesale Contract Compliance
Network Services
700 Hidden Ridge - HQW02H20
Irving, TX 75039
Telephone Number: 972/718-5988
Facsimile Number: 972/719-1519

If to Nextel:

Nextel **Communications, Inc.**
Attn: **Sob Edgerly**
Manager - Industry Affairs
1769 Old Meadow Road
McLean, VA **22102**
Telephone number: **703-538-8753**
Facsimile number: **703-762-7404**

29. **Protection.**

- 29.1 **Impairment of Service.** The ~~characteristics~~ and methods of operation of any ~~circuits, facilities~~ or equipment of either Party connected ~~with the services, facilities or equipment~~ of the other Party pursuant to ~~this Agreement~~ shall not ~~interfere with or impair service~~ over any ~~facilities~~ of the other Party, ~~its affiliated companies~~, or its ~~connecting and concurring~~ canters Involved in its services, ~~cause damage to their plant, violate any applicable law or regulation regarding the invasion of privacy of any communications~~ carded over the ~~Party's facilities~~ or create hazards to the employees of either Party or to the ~~public~~ (each hereinafter referred to as an "Impairment of Service").
- 29.2 **Resolution.** If ~~either~~ Party causes an Impairment in ~~Service~~, the Party ~~whose~~ network or ~~service~~ is being impaired (the "Impaired Party") shall promptly ~~notify~~ the Party causing the Impairment of Service (the "Impairing Party") of the nature and ~~location~~ of the problem and that, unless ~~promptly rectified~~, a temporary ~~discontinuance~~ of the use of any circuit, ~~facility~~ or equipment may be required. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of ~~Service~~. If the Impairing Party is unable to promptly ~~remedy~~ the Impairment of ~~Service~~, then the Impaired Party may at ~~its option temporarily discontinue the use~~ of the affected ~~circuit, facility or equipment~~.
30. **Publicity.** ~~Any~~ release, ~~public~~ announcement, advertising, or any ~~form of publicity~~ pertaining to ~~this Agreement~~, provision of ~~Services~~ or Facilities pursuant to ~~it~~, or association of the Parties with respect to provision of the ~~services~~ described in ~~this Agreement~~ shall be subject to prior ~~written~~ approval of both GTE and Nextel.
31. **Regulatory Agency Control.** ~~This Agreement~~ shall at all ~~times~~ be subject to changes, modifications, orders, and ~~rulings~~ by the Federal ~~Communications Commission~~ and/or the applicable state ~~utility~~ regulatory commission to the extent the substance of ~~this Agreement~~ is or becomes subject to the ~~jurisdiction~~ of such agency.
32. **Changes in Legal Requirements.** GTE and Nextel further agree that the ~~terms and conditions~~ of ~~this Agreement~~ were composed in order to effectuate the legal requirement, ~~in effect at the time~~ the Agreement was produced. Any ~~modifications~~ to those requirements ~~will~~ be deemed to automatically supersede any terms and conditions of this Agreement.
33. **Effective Date.** ~~This Agreement~~ will be effective only upon execution and delivery by both ~~Parties~~ and approval by the Commission in accordance ~~with Section 252 of the Act~~. If ~~this Agreement~~ or changes or modifications thereto ~~are~~ subject to approval of a regulatory agency, the "effective date" of ~~this Agreement~~ for such purposes ~~will~~ be ten (10) Business Days after such approval or in the event ~~this Agreement~~ is developed in whole or in part through ~~arbitration~~, sixty (60) Business Days after such approval. Such date (~~i.e.~~, ten (10) or, if arbitrated, ~~sixty (60)~~ Business Days after the approval) shall become the "effective date" of ~~this Agreement~~ for all purposes.
34. **Regulatory Matters.** ~~I~~ be responsible for obtaining and keeping in effect all FCC, state ~~regulatory~~ commission, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under ~~this Agreement~~.

35. **Rule of Construction.** No rule of construction requiring interpretation against the drafting party hereof shall apply in the interpretation of this Agreement
36. **Section References.** Except as otherwise specified, references within an Article of this Agreement to a Section refer to Sections within that same Article.
37. **Service Standards.**
- 37.1 The Parties will provide a level of services to each other with respect to interconnection under this Agreement in compliance with the nondiscrimination requirements of the Act.
- 37.2 The Parties will alert each other to any network events that can result or have resulted in service interruption, blocked calls, and/or changes in network performance.
38. **Severability.** If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be unenforceable, the rest of the Agreement shall remain in full force and effect and shall not be affected unless removal of that provision results, in the opinion of either Party, in a material change to this Agreement. If a material change as described in this paragraph occurs as a result of action by a court or regulatory agency, the Parties shall negotiate in good faith for replacement language. If replacement language cannot be agreed upon within a reasonable period, either Party may terminate this Agreement without penalty or liability for such termination upon 90 calendar days' prior written notice to the other Party.
39. **Subcontractors.** enter into subcontracts with third parties or affiliates for the performance of any of Provider's duties or obligations under this Agreement
40. **Subsequent Law.** The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, or regulations that subsequently may be prescribed by any federal, state or local governmental authority. To the extent required by any such subsequently prescribed law, rule, or regulation, the Parties agree to modify, in writing, the affected term(s) and condition(s) of this Agreement to bring them into compliance with such law, rule, or regulation.
41. **Taxes.** Any state or local excise, sales, or use taxes (excluding any taxes levied on income) resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under applicable law, even if the obligation to collect and remit such taxes is placed upon the other Party. The collecting Party shall charge and collect from the obligated Party, and the obligated Party agrees to pay to the collecting Party, all applicable taxes, except to the extent that the obligated Party notifies the collecting Party and provides to the collecting Party appropriate documentation as GTE requires that qualifies the obligated Party for a full or partial exemption. Any such taxes shall be shown as separate items on applicable billing documents between the Parties. The obligated Party may contest the same in good faith, at its own expense, and shall be entitled to the benefit of any refund or recovery, provided that such Party shall not permit any lien to exist on any asset of the other Party by reason of the contest. The collecting Party shall cooperate in any such contest by the other Party. The other Party will indemnify the collecting Party from any sales or use taxes that may be subsequently levied on payments by the other Party to the collecting Party.
- 41.1 **Tax -** A charge which is statutorily imposed by the state or local jurisdiction and is either (a) imposed on the seller with the seller having the right or responsibility to pass the charge(s) on to the purchaser and the seller is responsible for remitting the charge(s) to the state or local jurisdiction or (b) imposed on the purchaser with the seller having an obligation to collect the charge(s) from the purchaser and remit the charge(s) to the state or local jurisdiction.

Taxes shall include but not be limited to: federal excise tax, state/local sales and use tax, state/local utility user tax, state/local telecommunication excise tax, state/local gross

receipts tax, and local school taxes. Taxes shall not include income, income-like, gross receipts on the revenue of a provider, or prop* taxes. Taxes shall not include payroll withholding taxes unless specifically required by statute or ordinance.

- 41.2 **Fees/Regulatory Surcharges** -A charge imposed by a regulatory authority, other agency, or resulting from a contractual obligation, in which the seller is responsible or required to collect the fee/surcharge from the purchaser and the seller is responsible for remitting the charge to the regulatory authority, other agency, or contracting party.

Fees/Regulatory Surcharges shall include but not be limited to E911/911, E311/311, franchise fees, and Commission surcharges.

42. **Trademarks and Trade Names** Except as specifically set out in this Agreement, nothing in this Agreement shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, or trade names of the other for any purpose whatsoever.
43. **Waiver.** The failure of either Party to insist upon the performance of any provision of this Agreement, or to exercise any right or privilege granted to it under this Agreement, shall not be construed as a waiver of such provision or any provisions of this Agreement, and the same shall continue in full force and effect.

4 4 . **Environmental Responsibility.**

- 44.1 Nextel is responsible for compliance with all laws regarding the handling, use, transport,, storage, and disposal of, and for all hazards created by and damages or injuries caused by, any materials brought to or used at the Facility by Nextel. In accordance with Section 44.10. Nextel will indemnify GTE for all claims, fees, penalties, damages, and causes of action with respect to these materials. No substantial new safety or environmental hazards shall be created or new hazardous substances shall be used at a GTE Facility. Nextel must demonstrate adequate training and emergency response capabilities related to materials brought to, used, or existing at the GTE Facility.
- 44.2 Nextel, its invitees, agents, employee%, and contractors agree to comply with such reasonable environmental or safety practices/procedures, whether or not required by law, as requested by GTE when working at a GTE Facility. The Parties acknowledge and agree that nothing in this Agreement or in any of GTE's practices/procedures constitutes a warranty or representation by GTE that Nextel's compliance with GTE's practices/procedures, with this Agreement, or with GTE's directions or recommendations will achieve compliance with any applicable law. Nextel is responsible for ensuring that all activities conducted by Nextel at the Facility are in accordance with all applicable federal, state, and local laws, regulations, permits, and agency orders, approvals, and authorizations relating to safety, health, and the environment.
- 44.3 GTE and Nextel shall provide to each other notice of known and recognized physical hazards or hazardous substances brought to, used, or existing at the GTE Facility. Each Party is required to promptly provide specific notice of conditions or circumstances potentially posing a threat of imminent danger, including, by way of example only, a defective utility pole or significant petroleum contamination in a manhole.
- 44.4 Nextel shall obtain and use its own environmental permits, approvals, or identification numbers to the extent that such permits, approvals, or identification numbers are required under applicable laws. If the relevant regulatory authority refuses to issue a separate permit, approval, or identification number to Nextel after a complete and proper request by Nextel for same, then GTE's permit, approval, or identification number may be used as authorized by law and upon prior approval by GTE. In that case, Nextel must comply with all of GTE's environmental, health, and safety practices/procedures relating to the activity

in question, including, but not limited to, use of environmental "best management practices (BMP)" and selection criteria for vendors and disposal sites. The Parties acknowledge and agree that nothing in this Agreement, use of GTE's permits, approvals, or identification numbers, or compliance with GTE's practices/procedures constitutes a representation or warranty that Nextel's activities will be in compliance with applicable laws, and such compliance or Use Of GTE's permit, approvals, or identification numbers creates no right of action against GTE.

- 44.5 If Third Party Contamination is discovered at a GTE Facility, the Party uncovering the contamination must timely notify the proper safety or environmental authorities, to the extent that such notification is required by applicable law. If Nextel discovers Third Party Contamination, Nextel will immediately notify GTE and will consult with GTE prior to making any required notification, unless the time required for prior consultation would preclude Nextel from complying with an applicable reporting requirement.
- 44.8 GTE and Nextel shall coordinate plans or information required to be submitted to government agencies, such as, by Way of example only, emergency response plans and chemical inventory reporting, if they are associated with such Rings, GTE and Nextel must develop a cost sharing procedure.
- 44.7 When conducting operations in any GTE manhole or vault area, Nextel shall follow appropriate practices/procedures in evaluating and managing any water, sediment, or other material present in the manhole or vault area. So as to ensure compliance with all applicable laws, regulations, permits, and requirements applicable in such circumstances and to ensure safe practices, Nextel shall be responsible for obtaining any permit, regulatory approval, or identification number necessary for any of its operations involving the evaluation, collection, discharge, storage, disposal, or other management of water, sediment, or other material present in a GTE manhole or vault area. GTE shall not be responsible for any costs incurred by Nextel in meeting its obligations under this Section.
- 44.9 Nextel shall provide reasonable and adequate compensation to GTE for any additional or increased costs associated with compliance with any federal, state, or local law, regulation, permit, or agency requirement related to safety, health, or the environment where such additional or increased cost is incurred as a result of providing Nextel with interconnection or collocation, including, but not limited to, costs associated with obtaining appropriate permits or agency authorizations or approvals, remediation or response to any release or threatened release of any regulated substance, investigation or testing related, and training or notification requirements.
- 44.9 Activities impacting safety or the environment of a Right of Way (ROW) must be harmonized with the specific agreement and the relationship between GTE and the land owner. In this regard, Nextel must comply with any limitations associated with a ROW, including, but not limited to, limitations on equipment access due to environmental conditions (e.g., wetland areas having equipment restrictions).
- 44.10 Notwithstanding Section 23, with respect to environmental responsibility under this Section 44, GTE and Nextel shall each indemnify, defend, and hold harmless the other Party from and against any claims (including, without limitation, third-party claims for personal injury or real or personal property damage), judgments, damages (including direct and indirect damage and punitive damages), penalties, fines, forfeitures, cost liabilities, interest and losses arising from or in connection with (a) the indemnifying Party's negligent or willful misconduct, regardless of form; (b) the violation or alleged violation of any federal, state, or local law, regulation, permit, or agency requirement relating to safety, health, or the environment; or (c) the presence or alleged presence of contamination arising out of the indemnifying Party's acts or omissions concerning its operations at the GTE Facility.